PIPER & MARBURY
L.L.P.
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2430
202-861-3900
FAX: 202-223-2085

BALTIMORE
NEW YORK
PHILADELPHIA
EASTON

RANDALL B. LOWE
(202) 861-6477
FAX: (202) 223-2085

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January 29, 1997

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Federal Communications Commission
Office of Secretary

HAND DELIVERY

William F. Caton
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Access Charge Reform (CC Docket No. 96-262)

Dear Mr. Caton:

Enclosed for filing are an original and 12 copies of the Comments of Tele-Communications, Inc. in the above-referenced matter. We have also provided courtesy copies of this filing to the Competitive Pricing Division of the Common Carrier Bureau and International Transcription Service, Inc.

Should the Commission have any questions regarding this filing, please do not hesitate to call the undersigned.

Sincerely,

Randall B. Lowe

RBL/spa
Enclosures

No. of Copies rec'd 0+12
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	

Comments
of
Tele-Communications, Inc.

Randall B. Lowe
Piper & Marbury L.L.P.
1200 19th Street N.W.
Washington, D.C. 20036
(202) 861-6477

Its Attorney

Dated: January 29, 1997

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SUMMARY

These Comments are based on the premise that access rates should reflect the components of access and the manner by which access costs are incurred. They are also based on the premise that, where possible, the costs of access should be forward-looking and should be paid by the cost causer.

TCI comments that the CCL charge should be discontinued and included in a PIC-based charge that also could include unassignable TIC costs and other "legacy costs" such as the difference between historical and forward-looking costs as well as any subsidies to the extent such costs actually exist. The PIC-based charge would eventually be transitioned to the SLC.

TCI also comments that NTS rate elements should be flat-rated such that local switching forward-looking NTS costs for line cards and line-side ports should be recovered by the PIC-based charge, and the forward-looking costs of trunk-side ports dedicated to individual IXCs should be recovered by a flat rate charge per port. Local switching forward-looking TS costs would be recovered on a per-minute-of-use basis with a justified peak/off-peak rate structure except for message set-up costs that would be recovered as part of signaling.

The costs of the shared facility between the EO and the tandem for tandem transport, which are NTS, should be recovered by flat-rated charges based on forward-looking costs that are proportional to the number of dedicated trunks between the tandem and the SWC that are dedicated to an IXC. The mileage between the EO and the SWC for such transport should be measured in either route or airline miles, at the discretion of the IXC.

TCI adopts the Ameritech proposal for SS7 signaling rate elements and cost characteristics except that TCI believes there is currently insufficient justification for separate ISUP and TCAP charges. TCI is also concerned that the Commission's definition of SS7 signal transport is overly broad such that users of SS7 transport may end up paying for costs which they do not incur.

Recognizing that ILECs have market power and CLECs do not, TCI proposes that the Commission adopt a combination of the prescriptive and market-based approaches to regulation. Until an ILEC can prove that substantial competition exists on a service-by-service basis in defined geographic markets based upon the competitive factors used by the Commission with regard to AT&T, it should remain subject to regulation, including subparts D and E of Part 69.

TCI addresses the Commission's concern regarding universal service reform and double recovery stating that the Commission needs to determine the differential between pre- and post-reform mechanisms recovered by access charges and then reduce access charges accordingly.

With regard to terminating access, TCI comments that access charges should apply equally to originating and terminating traffic; that both types of ILEC traffic should be regulated until the ILEC can prove the existence of substantial competition; that the Commission should not treat "open end" traffic differently; and that CLEC terminating traffic should not be regulated, which will allow competition to take hold and grow.

TCI adopts the position of NCTA that access charges should not apply to ISPs.

Before the
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	)	

To: The Commission

Comments
of
Tele-Communications, Inc.

Tele-Communications, Inc. ("TCI"), by its attorney, hereby comments on the above-captioned Notice of Proposed Rulemaking ("NPRM").[1]

I. Introduction

A. Statement of Interest

TCI is the nation's largest cable television company. It has spearheaded major investments in advanced cable technology to provide high-quality, competitive telecommunications services. Among these is its subsidiary, TCI Communications, Inc., which

[1] During the preparation of this submission, TCI consulted with Steven R. Brenner and Bridger M. Mitchell of Charles River Associates on the economic analysis of many of these issues.

provides facilities-based, competitive local exchange carrier ("CLEC") services in Connecticut and Illinois and will soon provide such services in California. Accordingly, TCI has a critical interest in the instant proceeding.

B. Purpose of Access Charge Reform

The purpose of this Docket is clear: to reform access charges by allocating access costs in a manner that reflects how such costs are incurred and by assuring that costs are paid by those actually causing such costs. As the Commission acknowledged in the NPRM, the current access charge regime does not accomplish these goals. To the contrary, the history of access charges and the resulting access charge regime have resulted in non-cost-based rates paid by those who did not incur such costs.

As recognized by the Commission, failing to properly recognize principles of costing and cost causation distorts the marketplace.[2] As also recognized by the Commission, a charging mechanism that is not cost-based is inherently unstable and unsustainable in the face of competition.[3] It is clear, therefore, that the current regime, which creates and fosters these results, should not continue, especially now that the local exchange marketplace, in addition to interexchange services, is transitioning to competition. Prices must reflect costs, and those who do not incur costs should not pay them. Indeed, costs and cost causation are at the heart of just and reasonable rates.[4]

It is imperative that the Commission reform the current access charge regime by recognizing the manner by which such costs are incurred, and requiring costing and pricing mechanisms that properly reflect and assess such costs. Although in some instances it may not

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[2]NPRM, ¶¶ 42, 55.

[3]*Id.*, ¶ 55.

[4]See, *e.g.*, MCI Telecommunications Corp. v. FCC, 675 F.2d 408, 410 (D.C. Cir. 1982); Farmers Union Central Exchange v. FERC, 734 F.2d 1486, 1502 (D.C. Cir.), cert. denied, 469 U.S. 1034 (1984).

be possible to flash cut to such a result, it is necessary to at least begin the process and begin the process in earnest. This Docket presents just such an opportunity.

C. Principles of Lawful Rates

Since the beginning of the Communications Act,[5] Congress has required that in order for rates to be lawful, they must be just and reasonable[6] and they cannot be unjustly or unreasonably discriminatory.[7] Although these are relatively simple and explicit directives, they have, at times, proven difficult to implement. Through the years, the Commission has attempted various approaches to determining whether rates are lawful including "continuous surveillance," distributed costing methodologies, and structural separation.[8] The concern has always been, of course, that carriers would use their dominance to extract monopoly rents. In order to combat this possibility, the Commission and, for that matter, most, if not all, state regulatory agencies adopted a rate of return approach whereby carriers were allowed to earn an authorized rate of return on their investment.[9] This methodology was used for numerous years until it became apparent that, among other things, it provided carriers with an incentive to be inefficient by "gold-plating" their investments. The Commission also recognized that the rate-of-return approach increased the incumbent's incentives to cross-subsidize and respond anticompetitively to new entrants.[10]

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[5]Communications Act of 1934, 47 U.S.C. §§151, *et seq.*

[6]47 U.S.C. § 201(b).

[7]47 U.S.C. § 202(a).

[8]See, *e.g.*, Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 2884-85 (1989) ("Dominant Carrier Rates").

[9]See American Tel. & Tel. Co., 9 FCC 2d 30 (1967).

[10]Dominant Carrier Rates, 4 FCC Rcd at 2889-90.

Searching for a new construct by which to allow carriers to earn a fair rate of return but, at the same time, protect the ratepayer and, if present, the competitor, the Commission seized upon price caps which, although based on rate-of-return regulated rates, took away the incentive to be inefficient.[11] In other words, the price cap methodology allows carriers to reap the benefits of reducing their own inefficiencies. However, it was and is still necessary to determine the costs of service and to allocate those costs based upon how they are incurred.

First and foremost, costs must be allocated between the intrastate and interstate jurisdictions; hence, the separations process.[12] Unfortunately, separations may have succeeded in allocating more costs to the interstate arena and, in the process, keeping local rates artificially low.[13] If so, interstate ratepayers pay for costs which they do not cause when making an interstate telephone call. Of equal importance, the very costs on which access rates are founded, in that event, are flawed. Indeed, access costs and rates should be blind to any jurisdictional difference. The costs of access, that is, using access plant and facilities to originate or terminate a telephone call are identical. Yet through the separations process, they are not.

Once costs are allocated between the jurisdictions, it is then necessary to arrive at a method by which those costs will be allocated among service categories and, further, among rate elements within those service categories. In doing so, it is also necessary to ensure that the recovery of those costs occurs in the same manner that such costs are incurred, *i.e.*, traffic-sensitive ("TS") or non-traffic-sensitive ("NTS"). Once that process is accomplished, it is only then necessary to ensure that the rates properly reflect the principle of cost causation, namely, that they are assessed on the party that incurs the costs reflected by those rates.

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[11] *Id.* at 2931-33.

[12] See 47 C.F.R. Part 36 (1995).

[13] Aside from the issues in this proceeding, therefore, it is also imperative that the Commission convene a joint board to review and, if necessary, revamp the allocation of jurisdictional access costs. See NPRM, ¶ 6.

In the context of access, this chain of ratemaking requirements has led to certain rate elements that, for the most part, reflect the actual use of exchange facilities for access.[14] Dedicated switched access, for example, is comprised of an entrance facility between an interexchange carrier ("IXC") and the serving wire center ("SWC") serving that IXC, as well as the dedicated transport facility, local switching, and local loop to the end user. Tandem switched access is equally straightforward. It is similar to dedicated access except that, in place of dedicated transport directly to the end office ("EO") of the end user, the traffic is routed over a dedicated facility to a tandem switch and over a shared facility to the EO. This simple architecture, however, has not led to correct and proper cost allocations or charging mechanisms. For instance, NTS costs are assessed using TS rates or *vice-versa.* Moreover, interstate access costs contain so-called "legacy costs"[15] and interstate access rates that are not always assessed on the cost causer.

To be sure, rates cannot and should not be determined in a vacuum. Certain public policy considerations must necessarily affect the ratemaking process. For example, it may be important to impose directives that recognize such policies as encouraging competition, lowering barriers to entry, and avoiding or eliminating inefficiencies and "uneconomic bypass." In certain instances, a transition may be necessary because any other approach would impose undue burdens or harm on the industry and the public which it serves. These considerations seem especially true in an environment or marketplace such as communications, which is characterized by a long-standing *de facto* monopoly.

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[14] As the Commission has recognized, new technologies may arise or already be present in the network, which result in a different means of access. See NPRM, ¶¶ 139, *et seq.*

[15] As used herein, "legacy costs" include, *inter alia*, the difference between historical or embedded costs as well as subsidies.

D. Principles of Market Regulation and Access

Although the communications marketplace has been subject to price regulation, it has also been subject to market regulation. Finding its roots in the principles of common law common carriage, companies offering communications service to the public indiscriminately for hire have traditionally been held to a higher standard than other market participants such as private carriers.[16] In addition, and as stated above, common carriers in telecommunications also have traditionally been monopolies. It was not until the advent of competition in the interexchange arena that the Commission first recognized a difference between carriers with market power who could inhibit, if not destroy, nascent competition and those who were subject to the dictates of the marketplace.

Characterized by the ability to control production (*i.e.*, output) or prices or possession of bottleneck facilities, carriers with such market power were declared dominant by the Commission.[17] All other carriers were declared nondominant.[18] Based on that dichotomy, the Commission applied two separate regulatory structures applicable to each carrier type.[19] The structure applicable to dominant carriers was and is designed to protect against the ills of a monopoly, but it is also designed to allow competition to flourish. Conversely, the structure applicable to nondominant carriers was and is designed to reduce barriers to entry and to allow new entrants the ability to have a fair and open opportunity to compete.

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[16] National Ass'n of Regulatory Commissioners v. FCC, 525 F.2d 630, 640-42 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976).

[17] See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, *First Report and Order*, 85 FCC 2d 1, 20 (1980) ("Competitive Carrier").

[18] *Id.*

[19] See Competitive Carrier, 85 FCC 2d at 10; see also, MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Report and Order, 4 FCC Rcd 5048, 5051 (1988).

The importance of the difference between dominant and nondominant carriers cannot and should not be lost in this Docket. It is very clear at this point in our history that competition for telecommunications services is in the public interest; that it creates the benefits of a free and open marketplace whereby the market participants strive to provide existing as well as new and innovative goods and services to the consuming public at the lowest possible cost for the greatest possible value. It is also very clear at this point that a market will not become competitive overnight but must be allowed to gain strength and the ability to compete on equal terms.

In the beginning of the interexchange marketplace, for example, carriers who sought to enter were stopped at every turn. They were denied facilities, services, and access. Once they were given the right to these crucial ingredients, they were denied equality. They were not given the same types of facilities that the entrenched, dominant carrier gave to itself. Indeed, they were not even given equal rights to the time frame and manner by which such facilities were provisioned. Over time, these barriers to competitive interexchange services have come down, not completely, but they have come down. In the process, the industry and the government have learned.

The Telecommunications Act of 1996 ("1996 Act")[20] reflects this lesson in the context of CLEC services by requiring interconnection, unbundled network elements, collocation, and resale, to name a few, and by requiring such competitive necessities within a time certain. Thus, much of what was fought over through the years to get a toehold in the interexchange marketplace has been codified by federal law for the local exchange. Nevertheless, and as TCI discusses below, it is still necessary to implement those provisions and to allow the results to take hold and bear fruit. Until that happens, the Commission must continue to remain vigilant such that the rules in place today by which to recognize the power of all incumbent local

[20]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§ 151, *et seq.*

exchange carriers ("ILECs") *vis-a-vis* IXCs are now equally important *vis-a-vis* CLECs. Over time, of course, the need for those rules will hopefully diminish and, eventually, the marketplace will be truly free and open whereby the rules of that marketplace will control.

E. Statement and Summary of TCI's Position

TCI cites four basic, straightforward, guiding principles on which it believes the outcome of this Docket should be based; principles that recognize and take into consideration the legal and public policy considerations underlying just, reasonable, and non-discriminatory rates:

1) Access rate elements that reflect the components of access;

2) Access rates that reflect the manner by which costs are incurred, *e.g.*, TS and NTS costs;

3) Where possible, access rates that are determined using forward-looking costs; and

4) Access costs that are paid by the causer of those costs.

Based on these four essential principles, and as described below, TCI proposes, among other things:

1) Separate rate elements and flat rates for local switching line cards, line-side ports, and trunk-side ports;

2) A per-trunk, IXC optional route or airline mileage sensitive charge for shared facilities used for tandem-switched transport that is proportional to the number of dedicated, tandem-to-SWC trunks used by an IXC;

3) Peak/off-peak rates for traffic sensitive local switching costs;

4) The elimination of the Carrier Common Line Charge ("CCL") and the inclusion of CCL costs in a Presubscribed Interexchange Carrier ("PIC") -based rate element that would be phased-out over time by the transition of the costs comprising that rate element to the Subscriber Line Charge ("SLC");

5) The elimination of the Transport Interconnection Charge ("TIC") (also known as the Residual Interconnection Charge) and the reassignment of those costs on the basis of forward-looking cost causation with any remaining costs included in the PIC-based charge if the Commission decides that the recovery of such costs is acceptable;

6) The optional inclusion by the Commission of differences between forward-looking and embedded or historical costs in the PIC-based charge;

7) A transition to a marketplace approach to regulation for all "ILECs" on a service-by-service basis upon a showing of substantial competition in a defined and acceptable geographical market;[21] and

8) The equal treatment of originating and terminating access for all calls, including those that are "open ended."

TCI firmly believes that this approach based on the four guiding principles will go a long way toward reflecting the costs of access and the manner by which those costs are incurred.

II. COMMENTS

A. Common Line

As stated by the Commission[22] and as recommended by the Joint Board,[23] the present rate regime for common line costs inappropriately discourages efficient use of the network and encourages uneconomic bypass. Currently, the CCL charge is a traffic-sensitive rate despite the

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[21] Although the Commission proposes to restrict this matter to only price cap ILECs, TCI submits for the reasons set forth herein that all of the rules resulting from the NPRM should apply to all ILECs.

[22] NPRM, ¶ 58.

[23] Federal-State Joint Board on Universal Service, *Recommended Decision*, CC Docket No. 96-45, (rel. Nov 8, 1996) ("Joint Board Recommended Decision"), ¶¶ 775-76.

indisputable fact that local loops are dedicated facilities, the costs of which do not vary with traffic levels.[24] The Commission, therefore, should eliminate the CCL charge and recover common line costs directly from end-users. The Commission should also retain the existing SLC charges to recover as much as possible of whatever common line costs are to be recovered by interstate access charges. Moreover, the Commission should increase the cap on the SLC for additional residential lines and for multiple-line business customers.

Common line costs, to the extent they continue to be recovered by interstate access charges, should not be recovered by a usage-sensitive CCL charge, but instead by a charge that is directly based on the number of subscriber lines to which exchange access is provided. The most accurate method of reflecting these fixed, per-subscriber line costs would be to include them in the SLC.

The Commission may find it necessary, however, to establish a temporary rate element until the SLC can be increased to recover all common line costs recovered by interstate access charges. Under such circumstances, the Commission should adopt the Joint Board's recommendation to recover current CCL costs by a flat charge per customer based on the customer's choice of a PIC.[25] Since all end users should be treated similarly,[26] the Commission should also adopt the Joint Board's recommendation to allow ILECs to collect the flat charge that would otherwise be assessed against the PIC directly from any customer who opts not to choose

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[24] NPRM, ¶¶ 57-58.

[25] Joint Board Recommended Decision at ¶ 776. A PIC-based charge is also an appropriate way of structuring the recovery of any amounts other than common line costs that are to be recovered by interstate access charges, but that cannot be associated by cost causation with the supply of interstate exchange access service. Thus, as discussed in subsequent sections of these Comments, to the extent that amounts in excess of forward-looking costs continue to be recovered by interstate access charges, their recovery should also be shifted to the PIC-based rate element, leaving the local switching and transport rate elements to recover only forward-looking costs.

[26] *Id.*

a PIC.[27] Amounts recovered by the PIC-based charge should be shifted over time to recovery by the SLC, thereby allowing recovery of common line costs directly from end users who cause those costs, rather than from IXCs.[28]

By eliminating the CCL charge and instead allocating recovery of those common line costs to a flat-rate PIC-based charge, the Commission would establish an administratively simple mechanism for eliminating non-cost-based rates, and promote efficient network utilization and competitive entry. By applying the PIC-based charge to all end users and reallocating over time the PIC-based charge to the SLC, the Commission would cause rates to reflect cost causation and to accrue gradually to end users ultimately responsible for such costs. Lastly, such a proposal is consistent with the recommendations of the Joint Board to establish a flat-rated customer charge.

B. Local Switching

As the Commission tentatively concluded, a substantial portion of local switching costs do not vary with usage, or vary directly with the number of dedicated trunks.[29] The current local switching rate structure of recovering all switching costs by per-minute rates, therefore, is economically inefficient.[30] Accordingly, the Commission should establish new flat rate elements for the NTS costs associated with local switching.

Specifically, charges that vary with usage should not be used to recover the costs of local switching line cards and line-side ports. The costs of these line cards and line-side ports vary

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[27] *Id.*

[28] Alternative proposals for recovering the common line costs through "bulk billing" based on an IXC's total minutes or revenue, or through a "capacity charge" based on an IXC's total number of trunks, do not eliminate the distortion caused by recovering fixed local loop costs through usage-sensitive rates. Increased access traffic, under these alternative proposals, would still result in increased IXC payments to the ILEC and perpetuate the type of inefficient disincentives that currently result from per-minute CCL rates.

[29] NPRM, ¶¶ 72-73.

[30] *Id.*

with the number of loops connected to the switch, and not the amount of usage associated with those lines. The forward-looking costs of providing line cards and line-side ports are also part of the costs of establishing the loop connections between end users and the local switch. If these loop-related costs are to be recovered through interstate access charges, they should be recovered by a flat rate, as should other loop costs recovered by access charges.

Similarly, the costs of trunk-side local switching ports dedicated to individual IXCs vary with the number of trunks directly connected to IXCs. The forward-looking costs of these trunk ports should be recovered in a new rate element separate from the rate element used to recover the costs of the dedicated, direct transport trunk. A separate rate element is appropriate because an IXC may use a trunk port supplied by the ILEC without using the ILEC's dedicated transport.

The remaining local switching costs are TS costs resulting from the processing capacity required to set up attempted and completed calls and to maintain connections for the duration of the calls. The Commission correctly noted, however, that the current per-minute rate structure does not address the separate costs that an access provider may incur for call set-up resulting in economic inefficiency.[31] The forward-looking local switching costs associated with call set-up and tear down should be recovered in a separate rate element.

Although some local switch resources are required to set up a call routed through exchange access facilities to an IXC, most of the forward-looking costs of call set-up come from the signaling network. Because every exchange access call requires both local switching resources and signaling resources for call set-up in approximately fixed proportions, it would be more economically efficient and administratively simpler to recover the forward-looking local

[31] NPRM, ¶ 75.

switching costs of call set-up by a signaling rate element,[32] rather than by developing a new rate element under local switching.

The TS costs associated with completed calls, *i.e.*, the traffic-carrying capacity required to maintain connections through the switch for the duration of calls, are directly related to the volume of peak-hour traffic (rather than to the total minutes of traffic). To the extent that an ILEC's local switches share a common peak period, it would also be more efficient to use a peak-period, usage-sensitive charge to recover this capacity cost component. Accordingly, ILECs should be permitted to recover the forward-looking costs of local switching capacity with a peak/off-peak rate structure if that ILEC can demonstrate that the proposed rate structure does indeed reflect the peak/off-peak nature of the capacity costs.[33]

In sum, TCI would encourage the Commission to restructure its current local switching rates to include: (a) a flat charge that is either recovered by the PIC-based charge or an increase to the SLC to recover the costs associated with line cards and line-side ports; (b) a charge per trunk-side port to recover the forward-looking costs of trunk ports dedicated to the use of individual IXCs; (c) a separate charge to recover the forward-looking costs associated with call set-up (perhaps recovered through a signaling rate element); and (d) a charge per peak-period minute to recover the forward-looking costs of providing local switch capacity to maintain conversations. This method of recovery will ensure that the charges that vary with the utilization of local switch resources properly reflect, in both structure and level, the principles of cost-causation.[34]

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[32] See *infra* Section E (discussing the SS7 rate element).

[33] Alternatively, in a situation where peak periods vary substantially or are difficult to determine, these costs should be recovered by uniform per-minute rates.

[34] Taken as a whole, this rate restructuring may result in less revenue than the current local switching rates. Accordingly, to the extent that the Commission wishes to continue to recover the amounts in excess of the forward-

(Footnote continued to next page)

C. Transport Issues

The division of the transport rate structure into charges for three parts -- (1) entrance facilities, (2) direct-trunked transport, and (3) tandem-switched transport[35] -- allows charges for transport services to be based on the costs of the transport facilities required for access services. TCI supports continued use of this basic framework for transport rates. However, within this framework, rates should be restructured as discussed below to recover the forward-looking costs of the use made by access services of each of the three types of transport facilities.[36]

1) Flat-rate charges for entrance facilities and direct-trunked transport services

Entrance facilities and facilities providing direct-trunked transport between the SWC and the EO are dedicated to individual customers. The costs of these facilities should be recovered in flat-rate charges for entrance facilities and by flat-rate, airline mileage, distance-sensitive charges for direct-trunked transport. LECs should be permitted to differentiate these rates according to whether the LEC or the customer performs channel facility assignment, provided that the LEC supports differences in rates with forward-looking cost data.

2) Tandem-switched transport rates

i) Traffic sensitivity

Tandem-switched transport services are provided with a combination of dedicated and shared facilities. Facilities for transport from the SWC to the tandem, and the tandem-switch ports on which those trunks terminate, are dedicated to an individual customer. Tandem-

(Footnote continued from previous page)
looking local switching costs of interstate access, the balance of revenue could be recovered by the PIC-based charge.

[35]NPRM, ¶ 84.

[36]In Section D below, TCI comments that all of the forward-looking, transport-related costs that are included in the current TIC should be recovered in the specific facilities-based transport rate structure components. To the extent that "legacy costs" now recovered in the TIC or other transport rates continue to be recovered by interstate access charges, these residual costs could be recovered by the PIC-based charge.

switching resources, tandem-switch ports for trunks connected to EOs, and transport facilities from the tandem switch to the EOs are shared by traffic from several customers.

The costs of the dedicated facility components of tandem-switched transport will be efficiently charged by separate rate elements that recover (a) the forward-looking costs of the tandem-trunk ports on which circuits from IXC SWCs terminate, and (b) the forward-looking, airline mileage, distance-sensitive costs of transport facilities from the tandem switch to the SWC. Separate rate elements are preferable since, under the 1996 Act, carriers might be able to use ILEC-supplied trunk ports without using ILEC-supplied transport.

The costs of the shared facilities -- tandem switching and common transport between tandem switches and EOs -- are now recovered by charges per access minute. These costs are indeed sensitive to the volume of access traffic carried by these facilities, but per-minute charges do not match the costs caused by that traffic. The costs of these shared facilities depend on the capacity necessary to handle the combined traffic of all carriers using the tandem switch, which is to say the costs depend on the peak traffic these facilities must handle rather than total traffic. The number and cost of trunks from EO to tandem switches is determined by the peak volume of traffic, including access traffic, on those routes. Similarly, tandem switched capacity is installed to meet the expected number of trunks terminated at the tandem switch. Interstate access traffic imposes costs to the extent it increases required trunk and tandem switched capacity. Access charges that vary with the peak hour capacity required by interstate tandem-switched traffic would reflect cost causation better than charges that vary with total access traffic.

The costs of the capacity required for common transport to the tandem switch and for switching traffic at the tandem switch will likely vary directly with the number of dedicated trunks terminated at the tandem. The dedicated trunks from the SWC to the tandem switch are sized to handle peak capacity requirements of an individual IXC. The shared facilities should experience their peak traffic during the same peak period at which that traffic flowing through the tandem and onto the dedicated trunks connecting to the IXC customer reaches its maximum.

The number of direct trunks between a tandem switch and SWC, therefore, provides a measure of the capacity demands imposed by the IXC's tandem-switched access traffic on the shared facilities of the tandem switch and trunks from the tandem to the EOs. In short, the costs of the shared facilities depend on the capacity necessary to handle the peak traffic. Based on this premise, the costs of carrying this access traffic over the shared facilities can be efficiently recovered by flat monthly charges that are proportional to the number of trunks or tandem ports dedicated to the use of an IXC.

Using this rate structure to recover shared facility costs of tandem-switched transport would have several advantages. First and foremost, this structure would match charges for the use of shared facilities to the capacity costs imposed by tandem-switched access minutes better than an alternative of per-minute charges. Flat-rate charges are also easy to administer. Moreover, charges based on trunks or ports dedicated to an IXC will do a better job of matching charges to costs when tandem-switched transport is used for traffic overflowing from direct-trunked transport.

Basing all of the tandem-switched transport elements on trunk capacity automatically incorporates charges for traffic that overflows from direct-trunked transport facilities. Because traffic overflows largely in peak hours, the number of tandem-transport trunks the IXC customer requires will be sized to accommodate this traffic. Per-trunk, capacity-based rates then best reflect the costs caused by overflow traffic. In contrast, per-minute rates for tandem-switched transport do not reflect the costs caused by an IXC customer's tandem-switched traffic because additional traffic outside of peak hours requires no additions to transport or tandem-switching capacity.

ii) Distance sensitivity

At present, IXCs may choose between two rate structures. One alternative combines a flat rate for transport facilities between the SWC and tandem that depends on the distance between the SWC and tandem plus a usage-based rate for shared facilities that depends on the

distance from the tandem switch to the EO. The other rate structure has a single usage-sensitive rate that varies with airline distance between the SWC and the EO, regardless of actual routing. The Commission has sought comment on whether the second option should be eliminated.[37]

A tandem-switched transport rate structure based on the route distances and forward-looking costs of dedicated-trunk and shared-trunk transport links connecting the tandem to the SWC and to the EO has clear advantages. Such rates should accurately reflect the costs of routing traffic via that tandem. However, a rate structure based on route mileage gives the ILEC little incentive to choose routing in order to minimize the costs of tandem-switched transport. Furthermore, because the ILEC is in a position to choose where to locate its tandems and how EO traffic will be routed to the IXC, a rate structure based on route distances enables an ILEC supplying interexchange service to increase the cost of tandem-switched transport to its IXC competitors. As an alternative, allowing access service customers to choose between rates based on either route or airline distance eliminates any incentive of ILECs to choose routing that increases IXC costs.

D. The TIC

As stated above, TCI believes that the TIC should be eliminated by re-costing the elements of access on a forward-looking basis and, at the discretion of the Commission, allocating the differences between those costs and historical costs to the PIC-based charge which would be phased-out over time by transitioning these costs to the SLC. The importance of eliminating the TIC as part of a restructuring that bases all rates for transport services on forward-looking costs and minimizes the distortions of collecting any amounts above and beyond forward-looking costs cannot be overemphasized. While the TIC may have initially served as a temporary, transitional mechanism, retention of the TIC cannot be justified now that the local

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[37]NPRM, ¶¶ 87-88.

exchange marketplace is transitioning to competition. The fact that the TIC represents billions of revenue dollars should not prevent thoughtful reform. The TIC serves as an obstacle to the development of competition in the interstate access service market and assessment of the TIC contravenes the basic principles of cost causation. The level of the TIC was set as a residual amount without a clear understanding of the precise source or level of costs being recovered, and this amount is then recovered with a per-minute charge on all IXC use of switched access without regard to the facilities used to provide access service to each IXC. The Commission should no longer retain this inefficient mechanism that is antithetical to cost-based ratemaking.

In *Competitive Telecommunications Ass'n v. FCC*,[38] the Court addressed this issue and reached the same conclusion as TCI. The Court first criticized the operation of the TIC because it is assessed on an "equal per-minute basis, without regard to an individual carrier's usage of tandem switching facilities."[39] The Court determined that attempts to recover costs from IXCs that do not incur such costs conveys the wrong incentives to existing and potential competing providers of local transport services,[40] and encourages them to offer an inefficient mix of dedicated and tandem-switched service.[41] In the end, the Court required the Commission to "move expeditiously upon remand to a cost-based alternative to the [TIC]."[42]

In accord with this directive, the Commission recognized that assessment of the TIC as a surcharge on local switching will frustrate the development of a competitive access market.[43]

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[38] 87 F.3d 522 (D.C. Cir. 1996) ("CompTel").

[39] *Id.* at 530.

[40] *Id.* at 529-30.

[41] *Id.* at 531.

[42] *Id.* at 532.

[43] NPRM, ¶ 112.

Specifically, because the TIC is a per-minute charge assessed on all IXC use of switched access that recovers a residual amount unrelated to the costs of providing access service, it artificially suppresses demand for interexchange service, and may distort both IXC choices between tandem-switched and direct-trunk transport and competition between ILECs and rival suppliers of transport services.[44] The Commission also has acknowledged that a rate structure that recovers costs irrespective of tandem usage would encourage more tandem use than is economically efficient.[45] Such inefficient pricing signals and cost recovery mechanisms are inconsistent with the Commission's goal of establishing more economically rational rate structure rules.

While adoption of the TIC may have been necessary as an interim measure in response to the restructuring of transport rates, it is no longer needed in an emerging competitive exchange access market. Indeed, the TIC has never been adequately justified as an interim measure, much less as a permanent pricing mechanism.[46] Determination of the amount of the TIC has been driven by (a) the Commission's decision not to reduce ILEC access revenues and, in particular, ILEC revenues from access transport, and (b) to avoid increasing transport and tandem-switching rates, increases that would disproportionately affect smaller IXCs.[47] Exactly what costs are recovered in the TIC is not known because the level of the TIC was determined as a residual amount in order to restructure the transport rate structure with no change in total revenue at the time the "equal charge per unit of traffic" rate structure was discontinued.[48] It is therefore likely

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[44] *Id.*, ¶ 97.

[45] *Id.*

[46] CompTel, 87 F.3d at 532.

[47] See, *e.g.*, *id.* at 525.

[48] Transport Rate Structure and Pricing, 7 FCC Rcd 7006, 7008-09 (1992).